MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE:

MICHAEL SCHILB

Appellant

v.

DUKE MANUFACTURING COMPANY AND
DIVISION OF EMPLOYMENT SECURITY

Respondents

DOCKET NUMBER **WD72637**

DATE: April 5, 2011

Appeal From:

LABOR AND INDUSTRIAL RELATIONS COMMISSION

Appellate Judges:

Division One
Mark D. Pfeiffer, P.J., Thomas H. Newton, and Alok Ahuja, JJ.

Attorneys:

Blake I. Markus, Jefferson City, MO — Counsel for Appellant

Attorneys:

Shelly A. Kintzel, Jefferson City, MO — Counsel for Respondent, Div. of Employment Security
Whitney D. Pile, St. Louis, MO — Counsel for Respondent, Duke Manufacturing

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

MICHAEL SCHILB, Appellant, v. DUKE MANUFACTURING COMPANY AND DIVISION OF EMPLOYMENT SECURITY, Respondents

WD72637 **Labor and Industrial Relations Commission**

Before Division One Judges: Pfeiffer, P.J., Newton, and Ahuja, JJ.

Schilb worked as a warehouse manager for Duke, a manufacturing company. Schilb was terminated after he violated one of Duke's rules by causing a large tote to clash with a rolling rack, which injured another employee. Schilb applied for unemployment benefits and was denied because the deputy of the Division determined that his actions in shoving the tote and causing injury to another employee constituted misconduct connected with work. Schilb appealed the decision to the Appeals Tribunal. After a hearing, the Appeals Tribunal found Schilb's shoving the tote constituted misconduct connected with work when combined with a previous incident violating the same rule four months earlier. Schilb sought review, and the Commission affirmed and adopted the Appeals Tribunal's decision. Schilb appeals.

REVERSED

Division One Holds:

Schilb raises two points on appeal. He argues that the Commission erred in finding that he was discharged for misconduct connected with work after finding that the incident supporting discharge was a negligent act, and alternatively, that the Commission erred in finding that shoving the tote when combined with a previous incident amounted to recurring negligence constituting misconduct under section 288.030.

Whether a claimant was charged with misconduct is a question of law. Under section 288.030, negligent acts may support a finding of misconduct if the negligence is "in such degree or recurrence as to manifest culpability, wrongful intent or evil design, or show an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer." Thus, we have held that mere negligence or negligence failing to manifest any of the aforementioned characteristics does not constitute misconduct as a matter of law. However, we have not decided what constitutes recurrent negligence.

We construe statutes to accomplish the legislature's reasons for enacting the law. The purpose behind employment security is to provide for those who are unemployed through no fault of their own. Schilb's previous incident was an accident with his forklift in which another load was snagged and dragged with the load that Schilb was removing from the rack. Duke did not provide evidence that the incident was anything but a mistake. To combine this previous incident of poor job performance with Schilb's negligence in shoving a tote to find misconduct simply because the two incidents occurred within four months and were violations of the same rule would be contrary to the legislature's intent and our case law. Thus, the Commission erred

in doing so. Moreover, the negligent act of shoving the tote does not constitute misconduct because it was mere negligence. Schilb's points are granted. Therefore, we reverse the Commission's decision.

Opinion by Thomas H. Newton, Judge April 5, 2011

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